



**IRVINGTON POLICE DEPARTMENT
SENIOR LAW ENFORCEMENT OFFICER
MEMORANDUM**



TO: Township Attorney Marvin Braker

DATE: 01/03/2012

FROM: Dwayne Q. Mitchell *DQM*
Captain of Police

NUMBER: 2013-09

SUBJECT: Detective Sergeant Melvin Shamberger and Detective Sergeant Franciszek Piwowarczyk

Dear Mr. Braker,

I have received three memorandums from Director Joseph Santiago, memo numbers 12-336, 12-337 and 12-348. All of which were case summaries pertaining to disciplinary events involving Chief Michael Chase. Memo number 12-336 refers to Internal Affairs Case number 2012-286, memo number 12-337 refers to Internal Affairs Case number 2012-290 and memo number 12-348 refers to Internal Affairs Case number 2012-221.

Having reviewed the case summaries for Internal Affairs Case number 2012-286 and 2012-221 it is documented that Detective Sergeant Franciszek Piwowarczyk and Detective Sergeant Melvin Shamberger admitted violating rules, regulations and the Attorney General Guidelines. According to the summaries both Detective Sergeants admitted participating in the wrongdoing that Chief Chase was charged for. I am concerned about this new information because to the best of my knowledge neither officer has been disciplined for said conduct. I am even more concerned that in light of the Detective Sergeant's admissions, the Detective Sergeants are still assigned to Internal Affairs working on Internal Affairs Cases.

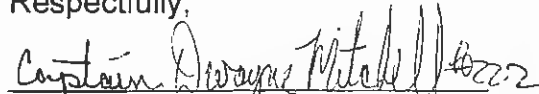
I contacted the Essex County Prosecutor's Office Professional Standards Bureau on December 26, 2012 relative to these concerns. On December 28, 2012, I received a written response from Chief Assistant Prosecutor Clara Rodriguez advising me to consult with you, the Irvington Township Attorney Marvin Braker relative to these concerns because the Conscientious Employee Protection Act (CEPA) may apply to Detective Sergeant Piwowarczyk and Detective Sergeant Shamberger.

After research and consultation, it is to my knowledge and understanding that the purpose of CEPA is to protect employees who report illegal or unethical workplace activities. It is also intended to encourage employees to report illegal or unethical workplace activities and to discourage employers from engaging in such conduct. I refer you to the following case *Fore v. Board of Review*, Docket No. A-0830-08T2 (App. Div. Apr 5, 2010). This case cites that employees are not protected by CEPA when they are involved in gross misconduct even if the employee is following orders. I also refer you to *Kari White v. Starbucks Corporation*, Docket No. A-3153-09T2 (December 9, 2011). This case cites that employees are not protected by CEPA when their job related duties and responsibilities require them to

report wrong doing. I am contacting you as per the memorandum from Chief Assistant Prosecutor Clara Rodriguez which recommended that I contact you prior to taking any action.

I am requesting a written response from you of the Township's Legal Position relative to my concerns about Detective Sergeant Shamberger and Detective Sergeant Piwowarczyk so that I can consider the Township's position prior to taking action relative to the said Detective Sergeants.

Respectfully,

A handwritten signature in black ink, appearing to read "Captain Dwayne Mitchell #222". The signature is written in a cursive, flowing style.

Captain Dwayne Mitchell #222

Senior Law Enforcement Officer In Charge

CC: Acting Essex County Prosecutor Carolyn Murray
Chief Assistant Prosecutor Clara Rodriguez
Mayor Wayne Smith
Business Administrator Wayne Bradley
Director Joseph Santiago

THE TOSCANO LAW FIRM, LLC

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BENJAMIN C. CURCIO
Of Counsel

January 24, 2013

Clerk of the Twp. of Irvington
1 Civic Square
Irvington, NJ 07111

**RE: Sgt. Melvin Shamberger and Sgt. Frank Piwowarczyk v. Twp. of Irvington
Title 59 Notice of Claim**

Dear Clerk:

Enclosed please find executed Notice of Claim on behalf of my clients, Melvin Shamberger and Frank Piwowarczyk.

Please file same and return a copy with the date and fact thereof.

Thank you.

Very truly yours,

s/ Patrick P. Toscano, Jr.

Patrick P. Toscano, Jr.

PPT/njt
Encl.

c: Marvin Braker, Esq. (via fax: 973-399-6723)

Claimants:

January 23, 2013

1)

- SHAMBERGER, Melvin O. [REDACTED]
[REDACTED]
- PIWOWARCZYK, Franciszek (Frank) [REDACTED]
[REDACTED]

2) N/A

3)

- A) On going hostile work environment / witness tempering/ retaliation for past official acts and intimidation.
- B) Irvington Police Department
- C) N/A
- D) Township of Irvington 1 Civic Square Irvington New Jersey 07111.
- E) Honorable Mayor Wayne Smith, Chief Michael Chase, Captain Mitchell, Lieutenant Monique Smith.
- F) While assigned at the IPD Internal Affairs Division:
 - In April of 2012, we have cooperated and provided statements in a matter involving Police Lieutenant Amanda Koontz (former Internal Affairs Commander) during which we reported Police Chief Chases misconduct toward the said Lieutenant.
 - We reported misconduct and other unlawful acts by Police Chief Michael Chase and Internal Affairs Commander Lieutenant Monique D. Smith (Chase's girlfriend). The acts included interference in internal investigations, bias treatment of officers and official misconduct.
 - We cooperated in an investigation led by the ECPO, which resulted in the Chief's suspension and approximately 155 administrative charges that followed against Chief Chase.
 - At the commencement of the investigation, we reported Chase's misconduct and wrongdoing to the Township Attorney, Mr. Marvin Braker, Esq., and Township Business Administrator, Mr. Wayne Bradley, at which time we were assured that our cooperation would not subject us to retaliatory measures and that we would not be removed from our present assignment (Internal Affairs Division) and that

the Township would protect our interest under CEPA. The Township was also placed on notice by written communications from our at that time Attorney, Mr. Trimboli.

- On December 3, 2012, Chief Chase was suspended and Captain Mitchell (Personal friend of Chase, Godfather to his newly born son) resumed command of the Irvington Police Department. Captain Mitchell helped Chief Chase to remove his belongings during suspension and transported Chief Chase to his residence. (While on suspension, Chief Chase was observed driving Mitchell's SUV).
- Captain Mitchell immediately began targeting us (Shamberger/ Piwowarczyk) and took retaliatory measures against us for taking part in the investigation that led to Chief Chase's suspension.
- On December 7, 2012, Captain Mitchell appeared in the Internal Affairs Office where he confronted us about the involvement in Chief Chase's suspension. He alleged that we were in violations of NJAG Guidelines and that we may end up in jail. He further accused us for taking part in "Fishing Expedition" against Chase along with the Irvington Police Director, Joseph J. Santiago. Capt. Mitchell demanded to see all the evidence that were prepared against Chase by the Essex County Prosecutors Office. He (Mitchell) subsequently generated an Administrative Report in which he provided false and inaccurate information regarding conversation that transpired in Internal Affairs office between Capt. Mitchell and us. From that point on, Capt. Mitchell took upon himself to retaliate and intimidate us to accomplish his objective in obtaining the necessary information to save Chase from being discipline / suspended / and/ or terminated. Capt. Mitchell made it known that he will remove us from IAD under false pretense that we potentially violated the AG Guidelines and IPD Rules and Regulations.
- On January 2, 2012, we confronted Capt. Mitchell (in writing) with further violations that were conducted by Chief Chase (while suspended) and Lieutenant Smith. We advised the Captain that as the Senior Law Enforcement Officer in Charge (Acting Chief), he was obligated to take immediate action to address the reported issues and violations. The Captain failed to act on the issues and instead the urgency to remove us from IAD became even greater. On January 17, 2013, Captain Mitchell issued two reassignment orders for us, which were contrary to IPD General Order 2012-05 (Hostile work Environment). Both of us were immediately reassigned to the Detective Division. We were not afforded the five-day rule before the change of assignment.
- We were deprived of our prestigious status (IAD Supervisors / Investigators). We were deprived of our office spaces and other privileges.
- We were smeared and our reputation was ruined by Captain Mitchell who made statements during roll call training to other members of the IPD that we were reassigned because of our potential involvements and wrongful conduct. Yet, Lieutenant Smith, despite the pending criminal investigation and other sustained IPD Violations has not been reassigned nor retaliated against in any way. She is still listed as IAD Commander with a Detective status.
- We were removed from the Internal Affairs Division so that we could not complete the opened investigations regarding Chief Chase, Captain Mitchell

(Fatal Pursuit) and Lt. M. Smith. These investigations are assigned to Det./Sgt. Piwowitz and Det./Sgt. Shamberger and are currently at the Essex County Prosecutor's Office of Professional Standards. We anticipate that when these investigations are returned to the Irvington Police Department they will result in disciplinary charges for Chief Chase as well as Lt. Smith.

- As of January 23, 2013, no action has been taken by the Township Administration to file charges against Capt. Mitchell for violation IPD General Orders, Insubordination and criminal violations (Retaliation for Official Acts/ Witness Tempering). He remains in charge and continues to cause further harm to our carriers and us.
- We are in fear for our safety, our future career advancement within the IPD and for further retaliation acts by the IPD / Township Administration.

G) Director Joseph J. Santiago, PBA President Maurice Gattison, Lt. Bowers, B.A. Wayne Bradley, Township Attorney Braker, Esq. Township of Irvington Special Prosecutor Robert Utsey, Esq. And ECPO Detective Michael Recktenwald.

H) N/A

I) N/A

4)

A) Other

B) N/A

C) N/A

D) ???????

5) One Million Dollars **each.**

6) NO

7) NO

8) NO

Dated: January 24, 2013



TOWNSHIP OF IRVINGTON

IRVINGTON MUNICIPAL BUILDING
CIVIC SQUARE, IRVINGTON, NJ 07111
TEL: (973) 399-6797

WAYNE SMITH
MAYOR

www.irvington.net

HAROLD WIENER
TOWNSHIP CLERK

NOTICE OF CLAIM FORM

Forward to:

1. Claimant:

Last First Middle

Area Code/Telephone Number

Street Address

Additional Address

Date of Birth Social Security Number

City State/Zip Code

2. If notices and correspondence in connection with this claim are to be sent to a person other than claimant, please complete this section.

Name

Street Address

Additional Address

City State/Zip Code

Area Code/Telephone Number

Relationship to Claimant

3. Accident:

A. The occurrence or accident which gave rise to this claim:

Date

Time

- B. Describe the location or place of the accident or occurrence:

Exact Location of the Occurrence

- C. Describe how the accident or occurrence happened. If a diagram will assist your explanation, please use the reverse side of this form.

- D. State the name and address of the municipality(s) that you claim caused your damage.

- E. State the names of the municipal employees whom you claim were at fault, including any information that will assist in identifying them.

- F. State in detail each and every negligent or wrongful act of the municipality and the municipality's employees which caused your damage.

- G. State the name and address of all witnesses to the accident or occurrence.

- H. If a vehicle accident, state the names, age, address, phone number, and relationship to you, of all passengers in your vehicle.

- I. State the names of all police officers and police departments who investigated the accident.

4. Claim for damages:

- A. Claim for damages: (Check appropriate box)

☐ Bodily Injury ☐ Property Damage ☐ Other

If other, explain

- B. i. If you claim bodily injury – describe your injuries resulting from this accident or occurrence.

- ii. Do you claim permanent disability resulting from this injury?

- iii. For each hospital, doctor or other practitioner rendering treatment, examination or diagnostic service, please list:

Name of Hospital, Doctor or other Facility

Address

City

State/Zip Code

Date of Treatment

Amount of Charges

Amount Paid if Payable by other sources, i.e., insurance.

- iv. If you claim loss of wages or income as a result of the injury, state:

Name of Employer

Your Occupation

Address

City

State/Zip Code

Date Employed at this Job

Rate of Pay

Dates of Absences from Work

Total Lost Wages to Date

If still out of work, expected date of return.

NOTE: If your claimed loss of income arises from self-employment or other wages, attach a calculation showing the basis of your calculation of lost income.

- v. Set forth any and all other losses or damages claimed by you.

- ix. Set forth in detail the loss claimed by you for property damage.

- D. Set forth in detail all other items of loss or damages claimed by you and the method by which you made the calculation.

5. The amount of the claim _____
6. Have you made a claim against anyone else for any of the losses or expenses claimed in this notice?

_____ Yes _____ No

If yes, set forth the names and address of all persons and the insurance companies against whom you have made such claims.

7. Are any of the losses or expenses claimed herein covered by any policy of insurance?

_____ Yes _____ No

For each such policy, state the name and address of the insurance company, policy number, and benefits paid or payable.

8. Have you received or agreed to receive any money from anyone for damages claimed herein?

_____ Yes

_____ No

If yes, set forth the details of such agreement.

The following items must be submitted with this notice:

1. Copies of itemized bills for each medical expense and other losses and expenses claimed.
2. Full copies of all appraisals and estimates of property damage claimed by you.
3. Copies of all written reports of all expert witnesses and treating physicians.
4. A letter from your employer verifying your lost wages. If self-employed, a statement showing the calculation of your claimed lost income.

I hereby certify that the foregoing statements made by me are true, that the attached statements, bills, reports, and documents are the only ones known to me to be in existence at this time. I am aware that if any statement made herein is willfully false or fraudulent, I am subject to punishment as provided by law.

Date

Claimant or person filing on behalf of claimant.

Print name as signed above.

C. If you claim property damage:

- i. Describe the property damaged. If vehicle, include make, model, year, color, vehicle identification number, license plate number, state, and parts of vehicle damaged.

- ii. The present location and time when the property can be inspected.

- iii. Date property acquired

- iv. Cost of the property

- v. Value of property at time of accident

- vi. Description of damage:

- vii. Has the damage been repaired?

_____ Yes

_____ No

If yes, by whom, and cost of repairs.

- viii. Attach each estimate of repair costs to this form.

- ix. Set forth in detail the loss claimed by you for property damage.

- D. Set forth in detail all other items of loss or damages claimed by you and the method by which you made the calculation.

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Date

Claimant or person filing on behalf of claimant.

Print name as signed above.

THE TOSCANO LAW FIRM, LLC

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ARTHUR G. MARGEOTES
amargeotes@pptlawfirm.com

BENJAMIN C. CURCIO
Of Counsel

January 18, 2013

VIA FACSIMILE: 973-399-6723

Marvin Braker, Esq.
Irvington Township Attorney
Civic Square
Irvington, NJ 07111

**RE: Sgt. Melvin Shamberger and Sgt. Frank Piwowarczyk
Title 59 Notice of Claim**

Dear Mr. Braker:

This firm has been retained to represent Sgt. Melvin Shamberger and Sgt. Frank Piwowarczyk relative to potential litigation as against the Township of Irvington, Michael Chasc and Dwayne Mitchell. Please provide this office with the Title 59 Notice of Tort Claim form adopted by the Township of Irvington, in order for our clients to execute and file same.

Further, our clients have been illegally removed from their positions within the Irvington Police Department IAD this very day. We believe this illegal task was carried out on behalf and for the benefit of suspended Police Chief Michael Chasc by his close friend and officer-in-charge, Capt. Dwayne Mitchell (attached).

By copy hereof, we are notifying both the U.S. Attorney's Office and the N.J. State Attorney General's Office, and respectfully request that a criminal investigation be undertaken by either of those fine offices. From what we have been advised, the Essex County Prosecutor's Office has declined criminal prosecution of either Chase or Mitchell to date.

Thank you.

Very truly yours,

s/ Patrick P. Toscano, Jr.

Patrick P. Toscano, Jr.

PPT/njt

c: Jeff Chiesa, Attorney General
Paul Fishman, U.S. Attorney
Carolyn Murray, Acting Essex Co. Prosecutor
Veraeity Investigations
Clients



IRVINGTON POLICE DEPARTMENT PERSONNEL ASSIGNMENT ORDER



NO: 2013-05

DATE ISSUED: January 17, 2013

TO: D/Sergeant Franciszek Piwowarczyk

BY ORDER OF: Captain Dwayne Mitchell *Capt D Mitchell*
Senior Law Enforcement Officer in Charge

SUBJECT: Temporary Change of Assignment

CC: Director Joseph J. Santiago
ALL COMMANDS
Personnel Section

OFFICER	FROM ASSIGNMENT	TO ASSIGNMENT	DATE
D/Sergeant Franciszek Piwowarczyk	Internal Affairs Division Tuesday- Friday 0800-1800	Detective Division Tuesday-Friday 0800-1800	01/21/2013



IRVINGTON POLICE DEPARTMENT PERSONNEL ASSIGNMENT ORDER



NO: 2013-04

DATE ISSUED: January 17, 2013

TO: D/Sergeant Melvin Shamberger

BY ORDER OF: Captain Dwayne Mitchell *Capt D Mitchell*
Senior Law Enforcement Officer in Charge

SUBJECT: Temporary Change of Assignment

CC: Director Joseph J. Santiago
ALL COMMANDS
Personnel Section

OFFICER	FROM ASSIGNMENT	TO ASSIGNMENT	DATE
D/Sergeant Melvin Shamberger	Internal Affairs Division Tuesday- Friday 0800-1800	Detective Division Tuesday-Friday 0800-1800	01/22/2013



Harold Wallace
President

Irvington Superior Officers Association

1 CIVIC SQUARE
IRVINGTON, NEW JERSEY 07111
EMAIL: IrvingtonSOA@gmail.com



Amanda Koontz
Vice President

January 23, 2013

Honorable Wayne Smith, Mayor
Township of Irvington
1 Civic Square Irvington, New Jersey 07111

Dear Mayor Smith:

I'm writing in regards to resent assignment changes in the Police Department effecting two SOA members. In August 2012 D/Sergeant Melvin Shamberger and D/Sergeant Frank Piwowarczyk reported what they believed to be misconduct taking place in the Internal Affairs Division of the Irvington Police Department. The matter was reported to the Essex County Prosecutor's Office who subsequently, over a four month period audited the IA Division records.

On December 3, 2012, upon recommendations of the audit, Chief Michael Chase was suspended. In addition to the audit the ECPO ordered Lieutenant Monique Smith removed from her position as commander of the IAD. The Internal Affairs Division has remained with the same personnel to complete the investigation for administrative charges against Chief Michael Chase. Earlier this month two additional Supervisors were assigned to the Internal Affairs Division, Lieutenant Michael Tomich and Sergeant Jerry Alston.

On January 17, 2013 D/Sgt. Shamberger and D/Sgt. Piwowarczyk were reassigned from the Internal Affairs Division to the Detective Division. Both have worked in the Internal Affairs Division for several years. This reassignment is clear retaliation for them reporting Chief Chase. There is no merit to their reassignment, not to mention it goes against orders of the Essex County Prosecutor's Office, the Township Attorney Marvin Braker, as well as it violates an Irvington Police Department General Order 2012-05.

As the President of the SOA I met with you in December after the suspension of Chief Chase. It was agreed that the unions would not take a position in the matter and allow the "process" to move forward with the Chief as he would have his hearing as every other employee is entitled to. As the SOA President I have to take a position in this assignment change. If this was a criminal offense this would be nothing less than witness tampering. The reassignment of these two Sergeants is nothing short of retaliation for their actions in reporting misconduct against a superior officer. Not only does this assignment change reflect on the current situation with the Chief of Police it echo's volumes to those in the police department with the message that if you speak to

the authorities regarding your superiors you WILL be punished. This is the exact reason the Whistle Blowers act was written.

As the Mayor of the Township of Irvington, the Appointing Authority of the Township and the person responsible for all day to day operation of all departments within the Township I respectfully request you intervene in this matter immediately. The Director of Police has the authority to run the department under your direction but the Director does not control the day to day operations of the police department. Again, this change is a violation of a General Order by the Police Director but the order has been violated by that person, the Senior Law Enforcement Officer in Charge, who has the authority to run day to day operations which includes assignment changes. I would also request a meeting at your earliest convenience to discuss this particular matter.

Sincerely,



Harold Wallace, President
Irvington Superior Officers Association

CC: Joseph Santiago, Director of Police
Marvin Braker, Irvington Township Attorney
Patrick Toscano, Attorney at Law